

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

In Re:

CONSHETA TINEAL PRINCE

**CASE NO. 19-04703-5-DMW
CHAPTER 13**

Social Security No. xxx-xx-4863

Address: 60 Prairie Lane, Lillington NC 27546-

Debtor

MOTION TO AVOID JUDICIAL LIEN OF PORTFOLIO RECOVERY ASSOCIATES

NOW COMES the Debtor, by and through counsel, and moves to avoid the judicial lien of Portfolio Recovery Associates (“Creditor”) pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 of the Federal Rules of Bankruptcy Procedure by showing unto the court the following:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334. The court has the authority to hear this matter pursuant to the General Order of Reference entered on August 3, 1984 by the United States District Court for the Eastern District of North Carolina.
2. The Debtor filed a petition for relief under Chapter 13 of the United States Bankruptcy Code on October 11, 2019 (“Petition Date”).
3. The Debtor is now, and has been at all times since this case was filed, the owner of a 100% title interest in the real property (“Property”) as described in Book 1815 at Page 679 as recorded on 08/21/03 in the Registry of Deeds for the County of Harnett, North Carolina, which property may also now or formerly be known as 60 Prairie Lane, Lillington, NC 27546.
4. As of the Petition Date, the fair market value of the Property was \$120,000.00.
5. As of the Petition Date, the Property was the residence of the Debtor, and the Debtor has claimed and was entitled to claim an exemption in the Property pursuant to N.C.G.S. § 1C-1601(a)(1) of not more than \$30,000.00.
6. Prior to the filing of this case, Portfolio Recovery Associates (“the Creditor”) obtained a judgment against the Debtor on or about 7/26/13 in the amount of approximately \$700.00 as referenced in file number 13-CVD-001402 in the Office of the Clerk of Court of Harnett County.
7. As a result, the Creditor holds a judicial lien against Debtor’s interest in the Property.
8. Upon information and belief, the balance owing to the Creditor concerning the judicial lien, together with interest, as of the Petition Date, was approximately \$1,047.97.
9. Upon information and belief, as of the Petition Date, the only other liens against the Property recorded in Harnett County were the following:

Name of Creditor Holding Lien	Type of Lien	Unpaid Balance of Lien As of Petition Date
Rushmore Loan	Deed of Trust	\$89,424.00
Total Unpaid Balance Of Other Liens:		\$89,424.00

10. Since the sum of: (1) The amount of the judicial lien held by Portfolio Recovery Associates, (2) The total amount of all other liens on the Property, plus (3) The amount of the exemption that the Debtor was entitled to claim if there were no liens on the Property, exceeds the value of the Property (or, in the event that the Debtor owns less than a 100% interest in the Property, the value of her interest in the Property) by \$471.97, the judicial lien impairs an exemption of the Debtor, and therefore, pursuant to U.S.C. § 522(f)(2)(A), the judicial lien is avoidable to the extent of \$471.97.
11. The Debtor also moves the Court for approval of an presumptive additional attorney fee pursuant to U.S. Bankruptcy Court Local Rule 2016-1(a)(6), to pay for the processing of this motion and the ensuing order.

WHEREFORE, the Debtor prays that the court enter an Order as follows:

1. Avoiding the judicial lien held by Portfolio Recovery Associates to the **extent of \$471.97**;
2. Approving an additional attorney fee, payable to the Law Offices of John T. Orcutt, P.C., in the sum of **\$450.00** to pay for the services outlined above; and
3. Granting such other and further relief as to the court may seem just and proper.

Dated: November 14, 2019

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Raymond DiGuiseppe

Raymond DiGuiseppe
N.C. State Bar No. 41807
6616-203 Six Forks Road
Raleigh, N.C. 27615
Telephone: (910) 920-0902
Fax: (910) 444-1279
Email: postlegal@johnorcutt.com

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Debtor

NOTICE OF MOTION

The Debtor has filed papers with the court to avoid the judicial lien held by Portfolio Recovery Associates, pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014, and for approval of an additional attorney fee for processing this motion and the ensuing order.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in this motion, or if you want the court to consider your views on the motion, then on or before fourteen (14) days after the date on this notice, you or your attorney must file with the court, pursuant to Local Rule 9013-1 and 9014-1, a written response, an answer explaining your position, and a request for hearing at: Clerk, U.S. Bankruptcy Court, P.O. Box 791, Raleigh, N.C. 27602.

If you mail your response to the court for filing, you must mail it early enough so that court will **receive** it on or before the date stated above. **You must also send a copy to the following:**

Law Offices of John T. Orcutt Attorney 6616-203 Six Forks Rd. Raleigh, N.C. 27615	John F. Logan Chapter 13 Trustee P.O. Box 61039 Raleigh, N.C. 27661-1039
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If a response and a request for hearing is filed in writing on or before the date set above, a hearing will be conducted on the motion at a date, time and place to be later set and all parties will be notified accordingly. If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in this motion and may enter an order granting that relief.

Dated: November 14, 2019

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Raymond DiGuiseppe

Raymond DiGuiseppe
N.C. State Bar No. 41807
6616-203 Six Forks Road
Raleigh, N.C. 27615
Telephone: (910) 920-0902
Fax: (910) 444-1279
Email: postlegal@johnorcutt.com

CERTIFICATE OF SERVICE

I, Charlene Ennemoser, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on November 14, 2019, I served copies of the foregoing **MOTION AND NOTICE OF MOTION TO AVOID JUDICIAL LIEN** by **certified first-class U.S. mail, return receipt requested**, upon the following parties:

Portfolio Recovery Associates
Attn: Officer or Managing Agent
P.O. Box 12914
Norfolk, VA 23541-

and by **regular first-class U.S. mail** upon the following parties:

Consheta Tineal Prince
60 Prairie Lane,
Lillington NC 27546

and by **automatic electronic noticing** upon the following parties:

John F. Logan
Chapter 13 Trustee

/s Charlene Ennemoser

Charlene Ennemoser